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NOTES AND MEMORANDA.

MORTGAGE TAXATION IN MISSOURI.

The State of Missouri at the general election November 6, 1900, adopted a constitutional amendment on the subject of taxation of mortgages, adopting what is known as the California system. It is in the following words:—

SECTION 22. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations, for which provision has already been made by law. In case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, in the manner hereinafter to be provided by law; and the value of such security shall be assessed and taxed to the owner thereof in the county, city, or other local subdivision in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security. If paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof: Provided, that in all such cases the interest of the owner of the security, as well as that of the owner of the property affected by such mortgage, deed of trust, contract, or obligation, shall be assessed on terms equally fair and just. If the note or other obligation secured is entitled to a credit by payment made on the principal thereof, the assessable value of the owner of the security, upon the fact being made known to the assessor prior to the assessment, shall be diminished by the amount of such payment, and the assessable value of the owner of the land or other property correspondingly increased, the intent hereof being to place those interested in any way in such land or other property on the plane of absolute equality as to taxation.

SECTION 23. Every contract hereafter made by which a debtor is obligated to pay any tax or assessment on money loaned or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein and as to such tax or assessment, be null and void.

There seems to have been little discussion in the State during the campaign over the merits of the amendment. Some six other amendments were voted upon at the same time, and all were adopted. One of these amendments authorizes the increase of taxation in counties for road purposes, another the commencement of criminal prosecutions for felonies by information as well as by indictment, and one authorizes verdicts by juries in civil cases by a three-fourths vote. Although these amendments were of grave importance, public attention, particularly in the city of St. Louis, was mainly enlisted in the amendments for aid to the World's Fair in celebration of the Louisiana Purchase, to be held in St. Louis in 1903, by the authorization of a bond issue in St. Louis and an appropriation from the State Sinking Fund. A vigorous campaign for these last two amendments seems to have carried through all of the others, including the California mortgage tax, by large majorities.

The amendment in question was substantially taken from the provisions of the California constitution of 1879. Section 23, prohibiting contracts for shifting of the tax, is identical with the California provision, which has been repeatedly construed by the Supreme Court of that State. It has been practically nullified by a decision of that court which holds valid contracts allowing the mortgagor a rebate in the interest paid by him in the event of his paying the taxes, thus giving an option to pay them, but not "obligating" him to do so. So universal is this shifting of the tax upon the mortgagor that Professor Plehn declares that "this experiment in taxation has come to an end."* In view of the adoption by Missouri of a constitutional provision which had been thus construed by the Supreme Court of the State from which it is taken, the question is raised whether under the recognized principle of construction our courts will not be bound to hold that we have adopted the construction with the provision, thus in effect defeating the very purpose for which the amendment was enacted. It is an interesting illustration of the anomalous conditions of American legislation in taxation.

An important difference, however, is to be noted in the

* "Taxation of Mortgages in California," *Yale Review*, May, 1899.

situation of Missouri and California. Before the California provision was adopted in 1879, mortgages were held by the Supreme Court of that State not to be taxable. The purpose of the constitution, therefore, was not only to relieve the holder of real estate from what was deemed an unjust burden of taxation, but also to compel the taxation of property which had hitherto escaped. But in Missouri, prior to the adoption of this amendment, mortgages — that is, notes secured by deeds of trust — were taxable as personal property, being included in the general property tax and required to be listed by the holder, like other personal property, for taxation at his domicile. That is, the State exercised its utmost power in the matter of taxing this class of property. All the land in the State was taxed to its full value without deduction for the mortgage; and all the mortgages and mortgage notes held by citizens of the State were taxed, whether the notes were in the State or not. The effect of the system, when enforced, was to tax both the property and the credit whose value rested upon the property. Practically, however, in the failure of the general property tax to reach personal property, very few mortgages were assessed for taxation except those held by trustees, those found by the assessor in the Probate Court, and those held by banks and trust companies, which were assessed on their capital stock. Thus, in California, mortgages were legally exempt, and in Missouri, with the exceptions noted, practically exempt.*

It will be observed that the Missouri provision contains an express declaration that the intent is to place those interested in the land and the mortgage “on the same plane of absolute equality as to taxation.” This is not in the California constitution. It seems to have been inserted in view of the well-known want of uniformity in the assessment of property for taxation in different parts of the State, varying from twenty per cent. in some counties to over seventy per cent. in the city of St. Louis.† The average assessment of farm lands is about thirty-three per cent. of their value. The attorney-general of the State has given his opinion that the same rate of valuation

* See the present writer's *Law and Practice of Taxation in Missouri*, p. 282.

† *Ibid.*, p. 247 *et seq.*

must be applied to the mortgage as to the equity. Thus, if land worth ten thousand dollars is assessed at four thousand dollars and is mortgaged for five thousand dollars, the new assessment would be adjusted, two thousand dollars to the mortgagor and two thousand dollars to the mortgagee.

Another important practical question is presented by the fact that banks, trust companies, and savings-banks in Missouri are not assessed upon their property, but upon the shares of their capital stock. They cannot, in addition, be taxed upon their mortgages or any other property without involving double taxation, which it is the very purpose of the amendment to avoid. Yet, as the holder of land cannot be taxed except upon the value less the encumbrance, the new system, if the mortgages held by such companies are not taxed, will involve a heavy loss in revenues.

The opinion is generally held that the amendment is not self-enforcing; that is, that it requires legislation before it can be made effective, as reference is expressly made therein to legislation for the manner of the assessment of the interests of the mortgagor and mortgagee. All property in Missouri is assessed annually as of the first of June for taxation; and the new system cannot be applied and enforced practically until the assessment of June 1, 1901.

The money lenders of the State have been very much exercised over the adoption of this amendment, and some of the representatives of foreign companies have expressed the intention of withdrawing from the State. For a time loans practically ceased. Many lenders have adopted the California plan of using contracts, as above stated, rebating part of the interest in the event the mortgagor pays the taxes. This system involves an interest rate on the mortgage of some two per cent. more than what would otherwise be charged. The legal rate in the State is now eight per cent. It is said that an effort will be made at the coming session of the General Assembly to reduce the interest rate to six per cent. This doubtless would be stoutly resisted.

On the other hand, it is likely that an effort will be made to defeat the operation of the amendment on the theory that it is not self-enforcing, by preventing any legislation for its en-

forcement. It seems clear that the amendment will be wholly ineffective in accomplishing the purpose for which it was enacted, the relief of the mortgagor, and that the experience of Missouri in this regard will be the same as that of California. The general recognition of this fact has created a strong public feeling in favor of a thorough revision of the revenue system of the State, and it is not unlikely that the coming session of the General Assembly will direct a vote of the people on the question of calling a Constitutional Convention.

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